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on Monday, 17 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.309/Add.1.

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The meeting was called to order at 10.a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cuba (CAT/C/32/Add.2; HRI/CORE/1/Add.84)

1. At the invitation of the Chairman, Mr. Sentí Darias, Mr. Amat Forés, Mr. Peraza Chapeau, Mr. Candia Ferreyra, Mr. Cala Seguí, Mr. Mesa Santana, Mr. Delgado González and Miss Hernández Quesada (Cuba) took places at the Committee table.

2. Mr. SENTÍ DARIAS (Cuba) said that the initial report of Cuba (CAT/C/32/Add.2) was the product of lengthy and meticulous preparatory work involving many State bodies and, in particular, the administration of justice branch. Noting that objectivity, impartiality, non-selectivity and non-politicization were important prerequisites for the credibility and effective functioning of the United Nations human rights treaty bodies, he said he trusted that the forthcoming dialogue with the Committee would provide Cuba with a clear and accurate assessment of the challenges that lay ahead.

3. Action to reform the domestic judicial system had begun with goal-setting during the popular revolt against the former dictatorship, under which torture, murder and disappearances had been practised systematically and with impunity. Following the restoration of the rule of law after the revolution, constitutional guarantees and guarantees of due process had become a practical reality and disappearances, political killings and torture a thing of the past. Severe penalties were imposed under Cuban law on anybody found guilty of acts corresponding to those proscribed by the Convention.

4. On 11 July 1997, the National People's Assembly had adopted People's Courts Act No. 82 and Office of the Attorney-General of the Republic Act No. 83, which reformed the structure and functioning of the two institutions, making them more cohesive and more capable of fulfilling the basic objectives of the Constitution. Decree-Law No. 175 of 17 June 1997 introduced amendments and additions to the existing Penal Code to bring it into line with the agreements adopted under the United Nations crime prevention and criminal justice programme.

5. Cuba had ratified most international human rights instruments and continued to study those to which it was not yet a party. However, it was well aware that, unless legal guarantees were accompanied by the requisite political will to ensure their observance, they remained a dead letter. Cuba's unrelenting commitment to the fight against injustice, ill-treatment and torture was a fundamental principle of its socialist society.

6. Mr. PIKIS (Country Rapporteur) said that the rights essential for the protection of human dignity must be comprehensively defined, incorporated in the law and institutionally protected by the establishment of appropriate machinery for the ventilation and punishment of every abuse. Arrest, detention, prosecution, trial and imprisonment must conform to standards that ruled out violation of the mental and physical integrity of the individual.

7. The Constitution of Cuba safeguarded the inviolability of the person and the home and prohibited the use of violence or pressure to force individuals to testify. Statements obtained in breach of that principle were deemed null and void and those responsible for their extraction were liable to punishment.

8. The fact that Cuba was a party to a large number of international human rights instruments was particularly significant in the light of article 20 of the Civil Code which accorded such instruments superior force in the event of a conflict with domestic law.

9. The Constitution declared that the courts and the Office of the Attorney-General were organs of the State, while judges were independent and owed obedience only to the law. Article 122 of the Constitution, however, subordinated the independence of the judiciary to the National People's Assembly and the Council of State, the country's legislature and executive.

10. An institutionally independent judiciary must be a coordinate and not a subordinate power of the State. Cuban jurists had voiced concern in that regard, complaining to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Cuba that the lack of independence of the judiciary was particularly clear when persons were prosecuted for offences with political connotations (A/51/460).

11. The Attorney-General, who was responsible under the Constitution for the prosecution of crime, the surveillance of legality and the investigation of citizens' complaints of official abuse of power, was also subordinate to the National People's Assembly and the Council of State.

12. Article 1 of the Covenant defined torture and article 4 bound States parties to make it the subject of one or more offences attracting sufficiently severe punishment to reflect its grave nature. The prohibition should extend to attempts, complicity and any other form of participation in the crime of torture. Torture consisted essentially of all direct or indirect forms of physical, mental or psychological coercion by State officials with a view to securing information or a confession or as a means of punishment or intimidation of a person under examination for the commission or suspected commission of an offence. It was a crime with distinct features and did not coincide with customary criminal law offences against the person.

13. Cuba had not enacted a specific crime or crimes embracing torture as defined in the Convention. Paragraphs 50 to 54 of the report referred to crimes against the person in the Penal Code, which did not, either separately or in conjunction, remedy that shortcoming. Article 18 of the Penal Code provided for the punishment of crimes against humanity and human dignity and offences laid down in international treaties. The Convention did not, however, establish an offence but postulated the conduct prohibited by its terms and left it to States parties to criminalize such conduct and to provide for appropriate sanctions.

14. What the Convention envisaged was the establishment of a specific offence of torture having the distinctive characteristics outlined in its provisions, an offence that would deter State officials and agents from abusing the power given them by law to inquire into the commission of crimes.

15. States parties must also, under article 2 of the Convention, take effective legislative, administrative, judicial and other measures to prevent the occurrence or manifestation of acts of torture in any form. The processes of detention, prosecution, trial and imprisonment must be such as to provide institutional safeguards against torture. Statements made under duress must be made inadmissible as evidence in court.

16. According to paragraph 32 of the report, article 3 of the Criminal Procedure Act stipulated that every offence must be proved independently of the testimony of the accused. It was not clear whether the reference was solely to testimony given in court or whether it also included statements made by the accused outside the court. Paragraph 35 stated that violence or coercion in the interrogation of detainees was prohibited but added that persuasion and encouragement were to be used at all times. Did that mean that the detainee might be cajoled into making a statement? Did persons in detention have a right to remain silent?

17. The report referred to a number of statutory and regulatory provisions designed to prohibit the use of force and subjection to humiliation. Article 30, paragraph 8, of the Penal Code expressly prohibited acts detrimental to human dignity and that was a welcome provision. Article 4 of the Code of Ethics of the National Revolutionary Police force required its members to respect the human dignity and rights of every citizen. Article 2 of the 1992 Prison System Rules prohibited measures likely to cause physical or psychological suffering or humiliation to prisoners.

18. Paragraphs 19 to 21 of the report described the functions of the Office of the Attorney-General, which was principally responsible for monitoring observance of human rights, and referred in particular to the Citizens' Rights Department. He would like some additional information and statistical data regarding the procedures for investigating complaints of abuse and their outcome and also regarding the prison inspection system.

19. The assertion in paragraph 25 of the report that there were no cases of persons who had been tortured or disappeared, and no other grave and systematic violations of human rights, was disputed by the reports of Amnesty International, the Special Rapporteur on the situation of human rights in Cuba of the Commission on Human Rights and the World Organization against Torture.

20. Their allegations fell into several categories, the first of which was the use of arbitrary arrest, detention and intimidation of dissidents as a means of silencing them or forcing them into exile. The class of persons targeted included human rights activists, opponents of the ruling party, journalists and trade unionists. The implication of the allegations in the various reports was that the machinery of the law was used for the suppression and harassment of such individuals.

21. The second category of allegations related to the use of force to extract confessions, of which there were a few reported cases. The third category involved the failure to afford detainees the opportunity to consult a lawyer of their own choosing. The fourth was the use of force as a form of punishment, aimed primarily at the isolation and removal from the fabric of society of the individual through exile and restriction of liberty.

22. The fifth category comprised certain types of offences which were nebulous in themselves particularly disrespect for and resistance to authorities. Questions arose as to whether the existence of such offences was in itself a factor of intimidation, since they were capable of misuse in a variety of circumstances.

23. The sixth category was that of prison conditions, which were described as unacceptable in terms of unsatisfactory accommodation; overcrowded cells; a lack of elementary hygiene; the use of beatings; indifference by the authorities to the use of force by prisoners against fellow prisoners; the absence of proper avenues for complaints and their investigation; malnutrition and a lack of proper medical care, associated with the absence of vital medical supplies, which Cuba attributed to the United States embargo.

24. The seventh category consisted of the reference made in the Special Rapporteur's report to the occurrence of one death in prison, in circumstances arousing a degree of suspicion, but about which information was scanty.

25. The allegations in all those categories came mainly from information received by Amnesty International and the Special Rapporteur. They raised serious concerns about the situation prevailing in Cuba and required a response from the State party.

26. With respect to article 3 of the Convention, paragraph 49 of the report stated that the Constitution repudiated physical violence against persons residing in other countries, and accordingly no foreign citizen would be expelled, returned or extradited if there were valid reasons to believe that he would be in danger of being tortured. It was not entirely clear, however, that that provided the necessary legal basis for the application of the Convention, as difficulties might arise if there were conflicting provisions on extradition in bilateral treaties. In the absence of a specific offence of torture, moreover, the Committee was unable to correlate its applicability with article 5 of the Convention.

27. With respect to article 6, the report stated that persons accused of torture were arrested and measures taken for their confinement, but no account was given of actual cases of torture and their outcome; more information was needed.

28. What was the maximum period of pre-trial detention for preliminary examinations, referred to in paragraph 73 of the report? Contrary to the assertion in paragraph 72 of the report, Amnesty International reported cases of detainees who were denied access to counsel and kept in detention incommunicado for months. The "political" cases referred to by Amnesty International and associated with freedom of expression, and capital cases, fell short of international standards for a fair trial, especially as concerned the right to defence counsel. He asked for details on detainees' actual access to counsel, immediate communication with counsel and the right to silence.

29. In the absence of a specific offence of torture, it was also difficult to evaluate the State party's compliance with article 7 of the Convention.

From the information provided, however, it was not clear whether the State party acknowledged its responsibility to try persons whose extradition for crimes of torture was denied; further information was needed on the subject.

30. The information in the report with respect to article 8 was not directly concerned with the State party's compliance with that provision and was thus difficult to assess.

31. Mr. ZUPANČIČ (Alternate Country Rapporteur) said that, without the incorporation of the offence of torture into the Criminal Code, there could be no statistical overview of the occurrence of torture as an offence that could be committed only by a public official, with the intent of extracting a confession; that was a very important aspect of the definition and was not, legally speaking, covered by other similar offences.

32. While he had the general impression that Cuba was not practising torture in the strict sense of the word, the question was rather whether the intensive harassment by state security forces, referred to in the Special Rapporteur's report (E/CN.4/1997/53), amounted to cruel, inhuman or degrading treatment or punishment, especially after conviction, namely, in the prisons themselves. Under article 16 of the Convention, such treatment did not have to be practised with the intent of extracting a confession, while articles 10-13 applied equally to the question of cruel, inhuman or degrading treatment or punishment.

33. There were indications in the reports of some non-governmental organizations (NGOs) that the degrading prison conditions were used as a means of intimidation and discrimination against political prisoners. While the legal and constitutional guarantees did seem inadequate, and there were serious doubts regarding the independence of the judiciary when convicting and sentencing political opponents, the true problem from the Committee's viewpoint seemed to lie in the post-conviction area, for political dissidents and common criminals alike.

34. The United States embargo, which was aimed at bringing down the current Government, had certainly to be taken into account in that regard; it was highly probable that both prison conditions and political harassment would be less worrisome if those external pressures did not inflict economic hardship on the population in general.

35. The Special Rapporteur's recommendations would be largely applicable from the Committee's standpoint also; especially noteworthy was the recommendation that all elements liable to infringe the rights and freedoms of individuals should be eliminated from the legal provisions relating to "social danger" and security measures.

36. With respect to article 10, the report mentioned the training given to law students, but what the Convention required was not general education on the criminal law but education geared specifically to the prevention of torture. He would like to know whether law students were informed of the Convention and of its legal repercussions for each individual State party.

37. With respect to article 11, the report should have indicated whether there was any systematic control, especially on the legislative level, of procedural situations which might be conducive to torture. The length of pre-trial detention, for example, was conducive to abuse, inasmuch as the potential victim was in the hands of the police without proper supervision. Had there actually been any inspections of prisons by magistrates and government procurators, as referred to in paragraph 101 of the report? If so, what had been their outcome?

38. With respect to article 12, he would appreciate information concerning the specific investigations carried out and their outcome.

39. With respect to article 13, paragraph 108 of the report referred to a typical situation in which an individual complaint by a victim was treated as a so-called adhesion procedure in criminal procedure, meaning that civil claims were handled together with criminal claims. Since criminal procedures usually required a much higher level of proof than civil procedures, he wondered what happened to a civil claim if the person accused of torture was acquitted and whether the plaintiff was permitted to continue with the civil procedure and be awarded damages.

40. According to paragraph 114 of the report, persons held in detention had the right to submit complaints to the authorities through the appropriate channels. Some NGOs had, however, reported reprisals against persons complaining of prison conditions. He would like to know whether that was the case or not.

41. He did not think the Ministry of the Interior was the right forum for processing disciplinary and other forms of complaints, as stated in paragraphs 115-116 of the report. The procedure would be more credible if such jurisdiction to be given to an institution outside the Ministry, so that it could be truly independent.

42. With respect to article 14 of the Convention, he would like more information on the Compensation Fund responsible for enforcing civil liability consisting of redress, referred to in paragraph 123 of the report. How many claims had been awarded through the Fund, and how many concerned complaints made by prisoners?

43. Paragraph 125 of the report, according to which the Cuban Labour Code permitted a person detained and later acquitted to be compensated for wages lost during that period, was very positive.

44. The exclusionary provision in article 15 was traditionally foreign to Continental-type criminal procedures, which were based on finding out the truth about an allegedly criminal act through official instruction principles. It therefore required a special legislative effort to integrate that somewhat imponderous legal principle into an essentially inquisitorial criminal procedure. He would thus like to know what the real meaning was of the assertion in paragraph 127 that statements obtained in breach of the principle of self-incrimination should be null and void.

45. If a person was tortured to produce a statement during pre-trial detention, did that confession ever reach the court? Did the examining magistrate learn of it? If so, the exclusion did not mean a great deal. He hoped, at very least, that the judge was forbidden to refer to evidence so extracted when giving the reasons for his judgement. The Convention was very much about self-incrimination; and the privilege against it, which was at the heart of every criminal procedure, must be consistently respected by an independent judiciary if there was to be a fair trial and the rule of law.

46. Mr. SØRENSEN said that, since Cuba had ratified the Convention, it would presumably not return extradited persons to places where there were substantial grounds for believing they would be subjected to torture. Nonetheless, he would like to know whether it intended to ratify the Convention and Protocol relating to the Status of Refugees, the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.

47. On paragraphs 93 to 98 of the report, he stressed that, pursuant to the provisions of the last sentence of article 16, paragraph 1, article 10 required States parties to provide education and information regarding the prohibition, not only of torture, but also of other forms of cruel, inhuman or degrading treatment or punishment. Doctors working for the police and prisons and military and forensic doctors were at risk because of the potential conflict between their roles as physicians and as civil servants. Consequently, he wished to know whether medical students in Cuba were given specific training on the prohibition of torture, and whether doctors at risk were provided with further training or guidelines other than those referred to in paragraph 98 of the report.

48. With respect to article 11, he noted that prison conditions appeared to be very bad in Cuba. Were the prisons run by a prisons service, or was the system a military one? It would be helpful if the Committee were given statistics on the number of prisoners, overcrowding, the number of deaths annually in prisons, and the causes of such deaths. If there was a survey of health in prisons, containing details of the incidence of diseases such as tuberculosis, the Committee would be pleased to receive a copy. Provision of such information would help promote an awareness of the reasons for the problems that existed.

49. With respect to article 14, the Committee interpreted the expression "as full rehabilitation as possible" as including medical rehabilitation. The sequelae of torture were very severe and, even if 35 years had passed since the system had changed, there would still be torture survivors requiring treatment. Was there a special rehabilitation centre for torture victims in Cuba?

50. Lastly, he drew the Cuban delegation's attention to the fact that the United Nations Voluntary Fund for Victims of Torture lacked the resources it needed to perform its functions adequately. Notwithstanding Cuba's severe economic problems, a small contribution to the Fund by the Cuban Government would be very welcome, and would also be an important symbolic demonstration of Cuba's respect for the victims of torture.

51. Mr. BURNS said he endorsed the comments by the Rapporteur and the Alternate Rapporteur regarding cases of ill-treatment of detainees in police custody, standards of detention in prisons, and the need for a definition of torture. Without such a definition, it was impossible to decide whether raw data on police excesses did or did not involve torture, and States parties would thus be unable to comply with their reporting obligations.

52. He asked for clarification of the meaning of the first paragraph of Cuba's declaration upon ratification of the Convention, which stated that the Government of the Republic of Cuba deplored the fact that, even after the adoption of General Assembly resolution 1514 (XV) containing the Declaration on the granting of independence to colonial countries and peoples, a provision such as paragraph 1 of article 2 had been included in the Convention. He failed to see where that provision gave offence.

53. Furthermore, the second part of Cuba's declaration upon ratification stated that the Government of the Republic of Cuba declared, in accordance with article 28 of the Convention, that the provisions of paragraphs 1, 2 and 3 of article 20 would have to be invoked in strict compliance with the principle of the sovereignty of States and implemented with the prior consent of the States parties. It was not clear to him whether Cuba was entering a reservation to article 20 in its entirety, or making a declaration involving an interpretation of and a restriction on the way in which the Committee could bring article 20 into play. He would thus be grateful for clarification of that part of the ratification statement also.

54. It had come to the Committee's attention that, in 1995 and again in 1996, the Special Rapporteur on questions related to torture of the Commission on Human Rights had requested the Government of Cuba to confirm or reject various allegations of ill-treatment of detainees. He asked why the Government had apparently been unable to respond to that request. He also wished to know how prosecutors were appointed, and whether they had any jurisdiction over the police investigation.

55. The report made it absolutely clear that orders from a superior officer could not be invoked as a legal defence of any conduct constituting a breach of the Convention. Were there any circumstances whatsoever in which such orders could be invoked in defence of what would otherwise be an unlawful act?

56. If he had understood paragraph 67 correctly, Cuba was to be complimented on being one of the few States to have assumed a truly universal jurisdiction over torture for, on the assumption that torture was regarded as a crime against humanity - an assumption he asked the Cuban delegation to confirm, then there was clearly universal jurisdiction under article 5 of the Penal Code, rather than merely jurisdiction vis-à-vis acts of torture committed in other States parties to the Convention.

57. Paragraph 88 of the report might theoretically give rise to a lacuna. He fully understood that Cuba would not extradite Cuban nationals - a position many countries adopted - and that it based extradition on the principle of mutuality in all its forms. However, in a hypothetical situation whereby a Cuban committed a serious crime such as murder in Canada and fled to Cuba, from whence he would not be extradited to Canada, he wondered whether Cuba

would have jurisdiction to try its national for that crime. Lastly, he would like to know whether there was a writ or legal instrument similar to that of habeas corpus in Cuba, enabling a court summarily to examine the legality of detention; and, if so, he would like the delegation to give an account of it.

58. Mr. REGMI said that the initial report of Cuba contained a wealth of information on the country's legal system, but that no information was given on the legislative, administrative, judicial and other measures adopted to secure the practical implementation of the Convention. Statistical information should be provided, on an article-by-article basis, so as to give a clear picture of the de facto situation.

59. According to paragraph 6 of the report, torture was not characterized as an offence in national legislation. That was a violation of article 4 of the Convention. Every State party was obliged to define torture clearly and incorporate it as an offence into its domestic law.

60. With respect to article 6, paragraph 73 of the report stated that the examination of the preliminary case file must not exceed 60 days, extendable by a period not exceeding 180 days, and, in exceptional cases, by a further unspecified period. The report did not make it clear whether the accused could be held in custody during those lengthy periods. If such were the case, it breached both the spirit and the letter of article 12 of the Convention.

61. Did Cuba's criminal justice system provide for solitary confinement or incommunicado detention? If so, what was the time limit for such detention, and did the accused have the right of appeal? Had the Government of Cuba, as a State party, entered into treaty commitments with other States parties to afford one another judicial assistance with regard to the acts referred to in article 4, including the provision of evidence necessary for the proceedings?

62. He also asked the Cuban delegation to provide information on the prison's system and conditions in Cuban prisons. According to the 1997 Amnesty International report, there were at least 600 prisoners of conscience in Cuba, serving sentences of up to 13 years; conditions were so poor as to constitute a form of punishment; and prisoners were denied medical treatment. Was there any truth in such reports and, if so, were any reforms being undertaken?

63. If, as was stated in paragraph 136, the State Council had agreed in March 1985 to issue instructions to the Supreme Court with the aim of immediately standardizing criteria, how was that compatible with an independent judiciary?

64. Lastly, article 9 of the Constitution of Cuba referred to "the will of the working people"; and the expression "socialist legality" occurred frequently in the report. Was there a difference between "the will of the people" and "the will of the working people"? Did "socialist legality" differ from other legal systems such as the rule of law, and was it compatible with an independent judiciary and respect for human rights? Did the Supreme Court have jurisdiction over administrative actions and the power to issue habeas corpus orders and other prerogative writs?

65. Mr. GONZÁLEZ POBLÉTE, having associated himself with the questions already asked, said that there were two persisting obstacles to the full enjoyment of fundamental rights in Cuba which favoured impunity or at least weakened the protection afforded to fundamental rights by criminal legislation. The first concerned the extenuating circumstances permitted under the due obedience laws, which had already been the subject of frequent international condemnation on account of their incompatibility with international human rights instruments. In his view, the situation in Cuba was particularly delicate, since due obedience was still regarded as a mitigating circumstance even where the limits of such laws had been exceeded, particularly since there was no provision for measuring the seriousness of offences.

66. In most legislations, exoneration from an offence might be permitted on the grounds of self-defence provided that a number of conditions were met whereas, under article 54 of the Cuban Penal Code, due obedience could be regarded as an extraordinary mitigating circumstance whereby the minimum fixed penalty for the offence in question might be reduced by as much as half.

67. The second obstacle to the full enjoyment of human rights in Cuba was the institution of military courts, of which he strongly disapproved. He stressed that the competence of such courts should be exclusively confined to military matters and that their consideration of human rights violations, even when committed by military personnel, had no justification. Cases involving the latter should preferably be heard in the civil courts. He wondered whether the Cuban authorities were considering making any changes in that connection, particularly in view of the comments that had been voiced on the subject in a number of international forums.

68. Mr. SENTÍ DARIAS (Cuba), having thanked the members of the Committee for their positive and wide-ranging comments concerning its initial report, assured them that their expert advice would be taken into account and that his delegation would make every effort to supply the information requested.

69. The delegation of Cuba withdrew.

The public part of the meeting rose at 12.15 p.m.